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DEPARTMENT FOR SCA/A
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SUBJECT: SUPREME COURT CONTINUES TO BACK KARZAI ON MEDIA LAW
DESPITE SHAKY LEGAL GROUNDS

¶1. SUMMARY: The Ambassador met with Afghan Chief Justice Azimi on June 7. Azimi stated that President Karzai had the authority to request judicial review of a portion of the Media Law after his veto was overridden, despite there being no obvious legal precedent. Azimi reaffirmed his commitment to reducing corruption, but complained that delayed assistance and lack of security is hampering the Court's development. The Ambassador stated that difficulties in donor assistance, while certainly a concern, are no excuse for failing to meet the Afghan public's expectations of a functioning justice system, and that continuing corruption might negatively affect the U.S. public's ongoing support for the U.S. Afghan effort. END SUMMARY

¶2. The Ambassador paid his initial courtesy call on June 7, 2009, to Abdul Salam Azimi, Chief Justice of Afghanistan's Supreme Court. Azimi opened by saying that he had seen the Ambassador on Afghan television the night before talking about peace, prosperity and justice during one of his provincial visits, and the Ambassador assured him that he would be emphasizing this message on more occasions.

¶3. The Ambassador inquired about the Media Law and the Court's recent opinion supporting Karzai's rejection of the provision in the law that would require Parliamentary approval of the RTA Director. Even though Parliament passed the law over Karzai's initial veto by a 2/3 majority, Azimi said that Karzai had the right to ask the Court to review the constitutionality of that provision under Article 121 of the Constitution. According to Azimi, the Ministry of Justice must now either gazette the law in accordance with the Court's opinion or re-draft the law from the beginning. The Ambassador said Parliament might demand another chance to review and consider the matter, but Azimi said that it was not clear what Parliament could do because there is no protocol for this circumstance.

¶4. NOTE: Parliament does not accept the power of the Court to do such constitutional interpretations. Instead, Parliament has voted to give that power to the Independent Commission referenced in Article 157 of the Constitution. Karzai has refused to appoint the members of that Commission, whose approval by the Parliament is specifically required in Article 157. END NOTE

¶5. On corruption, Azimi asserted that the Court has been active on anti-corruption issues, noting that 86 judges have been dismissed for corruption since he assumed office. Azimi said that salaries are also improving, but are still too low, and that a new law on judicial salaries is languishing in Parliament. The Ambassador stated that the Government of Afghanistan must improve its efforts to fight corruption. He expressed concern that rampant corruption and a lack of accountability could erode U.S. public support for the Afghan effort over the long term.

¶7. On judicial security, Azimi said that the lack of security remains a critical problem, and that eleven judges were killed in the last year. He said that the Court appealed to the MOI for assistance, but without results thus far. A related problem, Azimi said, is transportation: most judges have no

vehicles and are therefore easy targets while walking to and from their jobs. Azimi complained that Japan was moving too slowly in starting construction on a new Supreme Court headquarters building, and he expressed frustration at the pace of implementation of the World Bank's management of the ARTF-funded portion of the National Justice Program (NJP). Azimi complained that most justice sector expenditures are still coming from the Afghans and not from donors.

18. The Ambassador noted that there were many more serious problems in the justice sector than the creation of a new headquarters. He said that the justice sector had received too little attention in the past, and that the USG was going to increase its efforts in this sector, especially in the south and east. However, the Ambassador stressed, there is a failure on the GIROA's part to meet the public's expectations for justice. While acknowledging that the justice sector has suffered for too long with inadequate resources, he said that meeting those expectations is more important than getting new buildings.

19. As one means of meeting the public's expectation for justice, as well as reducing corruption, the Ambassador encouraged the use of new computer technology. He said that an extensive architecture was unnecessary, and that basic internet usage and more public access are cost effective ways to reduce corruption by increasing transparency and simplifying administrative procedures otherwise vulnerable to bribery and extortion. Azimi said that the Court now has internet connectivity with its offices in Mazar, Kunduz and Jalalabad, and he hopes to extend connectivity to the regional centers and then to all provinces.

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